Alan G. Hevesi
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OFFICE OF THE NEW YORK STATE COMPTROLLER

DIVISION OF STATE SERVICES

DEPARTMENT OF HEALTH

OVERSIGHT OF HEALTH CARE REFORM ACT POOL DISBURSEMENTS

Report 2005-S-10

AUDIT OBJECTIVES

Our objectives were to determine whether the Department of Health (Department) established adequate controls and procedures to provide reasonable assurance that Health Care Reform Act (HCRA) pool disbursements are recorded and made correctly, and whether HCRA disbursements were awarded for the intended State health-related purposes and were administered appropriately.

AUDIT RESULTS - SUMMARY

The enacted State budget for 2005-06 included language which required all HCRA funds disbursements be made from appropriated funds included in the budget. These changes resulted in a shifting of responsibility within the Department for reviewing and processing HCRA vouchers and also required these disbursements be subject to the Comptroller's Office traditional expenditure oversight. We determined the Department had controls in place during our audit scope (April 1, 2002 through August 15, 2005) which provided reasonable assurance that payments were made correctly. Due to changes included in the 2005-06 State budget, these processes and controls are no longer applicable.

We found the Department made disbursements from HCRA funds for health related programs and expenses. However, certain controls can be improved to strengthen the Department's oversight. Specifically, our review of selected contracts across several programs identified lengthy delays in approving and executing contracts for HCRA related activities. We reviewed ten contracts and found none of the contracts were executed in advance of the contract period and we found seven of the ten were not signed by the vendor until after the contract period began. In one instance, a contract was not executed until one day before the contract expired. This is not a new issue. We identified problems with the timely approval of contracts during our last audit of HCRA disbursements, *Health Care Initiatives Pool Disbursements* (Report 2001-S-43).

This report contains one recommendation and suggests the Department conforms to established contracting practices. Department officials generally agreed with our audit findings and are taking steps to address them.

This report dated June 5, 2006, is available on our website at: http://www.osc.state.ny.us. Add or update your mailing list address by contacting us at: (518) 474-3271 or
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Division of State Services
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BACKGROUND

HCRA was initially passed in 1996. Part of the legislation required insurance companies and hospitals to pay assessments into pools, which were then used to support various State health programs. Responsible Department officials entered into a contract with Excellus Inc. to administer the pools (i.e. collect funds due into the pools and make disbursements approved by the Department). Two pools were created by the passage of the initial legislation, the Public Goods pool and the Bad Debt and Charity Care pool. When HCRA was renewed in 2000, the Tobacco Control and Insurance Initiatives pool was created. This pool was funded by the State's share of tobacco settlement funds awarded as a result of lawsuits against cigarette manufacturers and taxes on tobacco products. HCRA was renewed again in 2003 and 2005 and will remain in effect until 2007.

HCRA funds support a wide variety of Department programs and initiatives from Child Health Plus, Elderly Prescription Insurance Coverage and tobacco use prevention initiatives, to payments for hospitals to recruit and retain workers and operate graduate medical education programs.

HCRA pool distributions totaled $11.45 billion during the scope of our audit, of which off-budget disbursements accounted for $2.4 billion of this total. The 2005-06 State budget included language requiring all HCRA disbursements to be made from appropriated funds.

AUDIT FINDINGS AND RECOMMENDATION

Controls Over Payments

Prior to the changes, off-budget HCRA items were not appropriated in the annual State budget. Rather, funding was outlined in the public Health Law which indicated the amount of funding a program could receive for a given period. Further, off-budget disbursements were not subject to traditional expenditure oversight. For example, the expenditures were not made through the Comptroller's Office, nor were they recorded on the central accounting system. Instead, the Department and Excellus were responsible for reviewing and paying vouchers for off-budget items. The Department's Health Care Finance Unit (Health Care Unit) reviewed and approved payment packets submitted by programs seeking payment with HCRA funds. A payment packet consisted of a voucher with supporting documentation and an indication of approval from the program to pay the amount on the voucher. Upon approval, an authorized Department official from the Health Care Unit sent a letter directly to Excellus directing them to make the requested payment. Excellus would then make payments directly to vendors from funds collected in the pools. Excellus would file monthly reports with the Comptroller indicating disbursements made for each month. For the programs we reviewed, we concluded that the controls the Department established were generally effective to ensure that disbursements were made for their intended purposes.

Moving HCRA funding on budget shifted the responsibility of approving and authorizing payments from the Department's Health Care Unit to the Department's Fiscal Management Group. In addition, all HCRA disbursements

are now subject to the Comptroller's Office traditional expenditure oversight. Now, Excellus transfers HCRA pool funds to the Comptroller on a regular schedule. The Comptroller receives vouchers from the Department for payment from pool funds and processes them like any other state vouchers. The Comptroller audits the vouchers and disbursements are made using funds transferred from Excellus. The changes have eliminated off-budget disbursements.

Contracting Practices

We reviewed ten contracts funded with HCRA money. We judgmentally selected these contracts based on our analysis of HCRA funding received and in two instances because of the uniqueness of the program objectives identified in the contracts. Although each of the contracts was for health-related programs and expenses, we found none of the contracts approved in a timely manner. Seven of the ten were not signed by the vendor until after the contract period began. While some of the delays were minor, in one instance the contract was executed just one day before the contract period expired.

This case involved a contractor for an Adult Home and Traumatic Brain Injury Surveillance Initiative. The Division of Home and Community Based Care (Division) which oversees nursing home and adult home operation was responsible for the contract. Upon review of the contract, we found it was executed just one day prior to the expiration of the contract period. In addition, the contractor, which is typically the first party to sign a contract, signed it just one month prior to the expiration of the contract. In speaking with the Division's contract manager for this contract, we were advised that there were no unusual circumstances surrounding this contract. The only explanation for the late approval was cumbersome contracting requirements, including the chain of command that must be adhered to in order for a contract to be approved. If an executed contract is not in place at the start of the contract period, required services could be placed in jeopardy and the Department's ability to enforce provisions of a contract is greatly reduced. Since no payment can be made until a contract is executed, the Department must convince a contractor to perform the services with the expectation the contract will not meet resistance as it goes through the approval process and payment will eventually be made. According to the contract manager, in this particular case, the contractor performed the agreed upon services for the Division during the entire contract period without being reimbursed. Although the contractor had both the ability and the willingness to operate without payment, other contractors may not. In addition, the Department has reduced oversight ability without an executed contract because they can not require contractors to submit the monthly or quarterly reports associated with vouchers.

This is not the first time we reported on the lack of timely execution of contracts for HCRA related activities. In report *Health Care Initiatives Pool Disbursements* (Report 2001-S-43), we identified similar problems with the timely approval of HCRA related contracts and recommended that the Department take action to ensure that contracts are approved before their intended start date. The issues we identified during our current audit indicate that the Department has not taken the action necessary to correct this problem.

Recommendation

Direct program managers to prepare and initiate contracts prior to the contract period to ensure vendor accountability as well as timely payment to vendors for services rendered.

AUDIT SCOPE AND METHODOLOGY

We conducted our audit in accordance with generally accepted government auditing standards. We audited the effectiveness of the Department's controls relating to HCRA disbursements for the period April 1, 2002 through August 15, 2005. To accomplish the objectives of our audit, we examined applicable sections of section 2807 of the Public Health Law and interviewed officials at the Department. We also obtained and analyzed data from Excellus showing HCRA disbursements for the period April 1, 2002 to December 31, 2004. We performed various analyses of the data and judgmentally selected five programs out of 76 for review: Graduate Medical Education (GME), Rural Healthcare Initiatives (Rural Health), Commissioner Priority Disbursements (Commissioner Priority), Tobacco Use Prevention Program (Tobacco), and Workforce Recruitment and Retention for public general hospitals (Workforce). The five programs varied in size in terms of disbursements from $1.3 billion for GME to $40 million for Rural Health during our scope. The programs also represented off-budget spending for two different HCRA pools, the Tobacco Control and Insurance Initiatives pool (Tobacco, Rural Health, and Workforce) and the Public Goods pool (GME and Commissioner Priority). Further, we selected programs in which disbursements were both formula driven (GME and Workforce) as well as grant type disbursements (Tobacco, Commissioner Priority, Rural Health). Disbursements for the five programs in our sample totaled $4.2 billion from April 1, 2002 to December 31, 2004.

We selected a judgmental sample of ten contracts across the three non-formula driven programs in our review (Tobacco, Commissioner Priority, and Rural Health) to determine how funds were used. We selected four contracts from the Commissioner Priority, and three each from Tobacco and Rural Health. We selected our sample from a total of 2,000 contracts (440 Commissioner Priority, 473 Rural Health and 1,087 Tobacco). Details about our sampling methodologies are provided in the *Audit Findings and Recommendations* section of the report.

To determine whether all of the required activities had been performed, we obtained and reviewed each contract along with any quarterly or monthly progress reports required by the contract. We identified and analyzed payments made against each contract during our time period. In addition, we met with each program manager overseeing the contracts we reviewed. For GME and Workforce, we met with the responsible department officials and reviewed how the formulas were applied.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These

duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

The audit was performed according to the State Comptroller's authority under Article V, Section 1 of the State Constitution; and Article II, Section 8 of the State Finance Law.

REPORTING REQUIREMENTS

A draft copy of this report was provided to Department officials for their review and comments. Their comments were considered in preparing this report, and are included as Appendix A. Department officials generally agreed with our audit findings and are taking steps to address them.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Health shall report to the Governor, the State Comptroller and leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include William Challice, David R. Hancox, Al Kee, Sheila Emminger, Ed Durocher, Brian Krawiecki, Nicole Van Hoesen, Ron Wharton, Holly Winters and Marticia Madory.

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Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

April 17, 2006

William P. Challice
Audit Director
Office of State Services
State Audit Bureau
123 William Street – 21st floor
New York, New York 10038

Dear Mr. Challice:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's (OSC) draft audit report (2005-S-10) on "Oversight of Health Care Reform Act Pool Disbursements."

Thank you for the opportunity to comment.

Sincerely,

Dennis P. Whalen
Executive Deputy Commissioner

Enclosure

cc: Mr. Cullen
Mr. Gahan
Mr. Genier
Mr. Griffin
Ms. Hefner
Mr. Howe
Mr. Pellegrini
Mr. Reed
Mr. Wollner

Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report 2005-S-10 on
"Oversight of Health Care
Reform Act Pool Disbursements"

The following are the Department of Health's (DOH) comments concerning the recommendations contained in the Office of the State Comptroller's (OSC) draft audit report (2005-S-10) on "Oversight of Health Care Reform Act Pool Disbursements."

Recommendation #1:

Direct program managers to prepare and initiate contracts prior to the contract period to ensure vendor accountability as well as timely payment to vendors for services rendered.

Response #1:

The Department does not dispute the lateness of the contracts reviewed within the scope of this audit. The contracts reviewed were from the 2003-2004 period, and were late for a variety of reasons, including late submission of proper forms by the contractors.

While the same issues that caused many of the delays continue to be present, the Department has adopted a more pro-active approach in dealing with these issues for more recent contracts. This includes training of Department personnel on the contracting process and creating realistic timelines for personnel to follow when developing a contract. The Department continues to identify and address roadblocks to timely contracting.